

JOSEPH P. RUSSONIELLO (CSBN 44332)  
United States Attorney  
JOANN M. SWANSON (CSBN 88143)  
Chief, Civil Division  
MELANIE L. PROCTOR (CSBN 228971)  
SARA WINSLOW (DCBN 457643)  
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-6730 (Proctor)  
(415) 436-6925 (Winslow)  
FAX: (415) 436-7169  
[melanie.proctor@usdoj.gov](mailto:melanie.proctor@usdoj.gov)  
[sara.winslow@usdoj.gov](mailto:sara.winslow@usdoj.gov)

Attorneys for Defendant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ROBERT H. WEINSTEIN,	)	No. C 09-0347 CRB
	)	
Plaintiff,	)	<b>STIPULATION OF SETTLEMENT;</b>
	)	<b><del>[PROPOSED]</del> ORDER</b>
v.	)	
	)	
UNITED STATES POSTAL SERVICE,	)	
	)	
Defendant.	)	

IT IS HEREBY STIPULATED by and between Plaintiff Robert H. Weinstein and  
Defendant United States Postal Service (together the Parties), as follows:

1. The Parties hereby agree to settle and compromise the above-entitled action under  
the terms and conditions set forth herein.

2. Defendant agrees to pay to Plaintiff the sum of Twenty-Two thousand Eight  
Hundred Seventy-Seven Dollars and Forty-Three Cents (\$22,877.43), which shall be in full  
settlement and satisfaction of any and all claims, demands, rights, and causes of action of  
whatsoever kind and nature, arising from, and by reason of any and all known and unknown,  
foreseen and unforeseen claims of damage or injury and the consequences thereof, resulting, and  
to result, from the same subject matter that gave rise to the above-captioned lawsuit, for which

1 Plaintiff, his heirs, executors, administrators, or assigns, and each of them, now have or may  
2 hereafter acquire against the United States of America, its agents or employees.

3 3. Plaintiff and his heirs, executors, administrators or assigns hereby agree to accept  
4 the sum stated in paragraph 2 in full settlement and satisfaction of any and all claims, demands,  
5 rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and  
6 all known and unknown, foreseen and unforeseen bodily and personal injuries, economic losses,  
7 and the consequences thereof which they may have or hereafter acquire against the United States  
8 of America, its agencies, agents, servants and employees on account of the same subject matter  
9 that gave rise to the above-captioned lawsuit.

10 4. This settlement is entered into by the Parties for the purpose of compromising  
11 disputed claims and avoiding the expenses and risks of litigation. This settlement does not  
12 constitute an admission of liability or fault on the part of any party.

13 5. This Agreement may be pled as a full and complete defense to any subsequent  
14 action or other proceeding involving any person or party which arises out of the claims released  
15 and discharged by the Agreement.

16 6. It is also agreed, by and among the Parties, that the settlement amount of Twenty-  
17 Two thousand Eight Hundred Seventy-Seven Dollars and Forthy-Three Cents (\$22,877.43) paid  
18 by the United States Postal Service represents the entire amount of the compromise settlement  
19 and that the Parties will each bear their own costs, attorneys fees, and expenses.

20 7. Payment of the settlement amount will be made by a check payable to Plaintiff  
21 Robert H. Weinstein in the amount of \$17,964.32 and a check payable to Hugo Torbet, Attorney  
22 at Law, in the amount of \$4,913.11. Plaintiff and his attorney have been informed that payment  
23 of the settlement amount may take sixty (60) days or more to process.

24 8. The Parties further agree that upon payment of the settlement amount recited  
25 herein, the United States Attorney's Office will prepare a joint stipulation to dismiss this case,  
26 which the parties agree to finalize and file within seven (7) days of payment of the settlement  
27 amount.

28 9. The Parties agree that should any dispute arise with respect to the implementation

1 of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue its  
2 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the  
3 Agreement in district court. The Parties agree that the district court will retain jurisdiction over  
4 this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

5 10. Plaintiff hereby releases and forever discharges the United States Postal Service  
6 and any and all of its past and present officials, employees, agencies, agents, attorneys, their  
7 successors and assigns, from any and all obligations, damages, liabilities, actions, causes of  
8 action, claims and demands of any kind and nature whatsoever, whether suspected or  
9 unsuspected, at law or in equity, known or unknown, arising out of the allegations set forth in the  
10 pleadings in this action.

11 11. The provisions of California Civil Code Section 1542 are set forth below:

12 A general release does not extend to claims which the creditor does not know or  
13 suspect to exist in his favor at the time of executing the release, which if known  
by him must have materially affected his settlement with the debtor.

14 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542, and fully  
15 understanding the same, nevertheless elects to waive the benefits of any and all rights he may  
16 have pursuant to the provision of that statute and any similar provision of federal law. Plaintiff  
17 understands that, if the facts concerning Plaintiff's injuries and the liability of the government for  
18 damages pertaining thereto are found hereinafter to be other than or different from the facts now  
19 believed by them to be true, the Agreement shall be and remain effective notwithstanding such  
20 material difference.

21 12. This instrument shall constitute the entire Agreement between the Parties, and it is  
22 expressly understood and agreed that the Agreement has been freely and voluntarily entered into  
23 by the Parties with the advice of counsel, who have explained the legal effect of this Agreement.  
24 The Parties further acknowledge that no warranties or representations have been made on any  
25 subject other than as set forth in this Agreement. This Agreement may not be altered, modified  
26 or otherwise changed in any respect except by writing, duly executed by all of the parties or their  
27 authorized representatives.

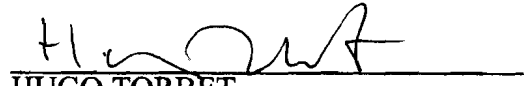
28 IT IS SO STIPULATED.

1  
2 Dated: June 23, 2009

  
ROBERT H. WEINSTEIN  
Plaintiff


4 Dated: June 26, 2009

HUGO TORBET, ATTORNEY AT LAW

  
HUGO TORBET  
Attorney for Plaintiff Robert H. Weinstein

8 Dated: June 30, 2009

JOSEPH P. RUSSONIELLO  
United States Attorney

  
MELANIE L. PROCTOR  
SARA WINSLOW  
Assistant U.S. Attorneys  
Attorneys for Defendant

14 **[PROPOSED] ORDER**

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18 Dated: June 30, 2009

19 THE HONORABLE CHARLES R. BREYER  
United States District Judge

